

IN THE UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

No. 2:18cv530

CSX TRANSPORTATION, INC.,
individually and on behalf
of NORFOLK & PORTSMOUTH BELT
LINE RAILROAD COMPANY,

Plaintiff,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,
et al.,

Defendants.

Remote Proceedings

January 20, 2021

10:17 a.m. - 5:32 p.m.

VIDEO DEPOSITION OF ANTHONY MACDONALD
(via Teleconference)

Taken before SUZANNE VITALE, R.P.R., F.P.R.
and Notary Public for the State of Florida at Large,
pursuant to Notice of Taking Deposition filed in the
above cause.



Job No. CS4380453

1 do that, right?

2 A. Could you repeat that statement?

3 Q. Sure. If CSX wanted to move freight to or
4 from NIT, it would have to use the Belt Line to make
5 that movement, right?

6 A. Correct.

7 Q. In other words, CSX did not have a direct
8 route or could not itself move freight to and from
9 NIT, right?

10 A. Correct.

11 Q. While you were manager of the Portsmouth
12 terminal, did you or anyone else with whom you
13 worked investigate whether CSX could construct track
14 directly into NIT so it would not have to use the
15 Belt Line?

16 A. Not to my knowledge.

17 Q. Now, on this map on page 3 of this
18 PowerPoint, it refers to CSXI Pinners Point.

19 Is that the same as the Portsmouth
20 terminal where you were the manager?

21 A. I don't see where you're looking.

22 Q. All right. Do you see the 664 highway
23 sign on this map?

24 A. Yes.

25 Q. All right, just kind of -- if you go a

1 was CSX draying containers to and from NIT?

2 A. Let's clarify. Let's confirm what we're
3 asking. Was I hiring and paying truckers --
4 trucking companies to move boxes from the Norfolk
5 International Terminal to the Pinners Point
6 intermodal facility?

7 Q. We can start right there.

8 A. I'm going to tell you that the port was
9 engaged in that act and was -- the
10 CSX Intermodal Terminal was a customer of the port.

11 Q. Okay. So if I'm understanding you
12 correctly, if their -- if intermodal containers were
13 being delivered to NIT that CSX needed to move by
14 rail to a particular destination, some of those
15 containers would be moved from NIT by truck to get
16 to the CSX railroad, correct?

17 A. Yes.

18 Q. And based on your testimony, are you
19 saying that the Virginia Port Authority managed the
20 movement of that container by truck from NIT to CSX?

21 A. Yes.

22 Q. Okay. And that type of drayage
23 arrangement occurred each year while you were a
24 manager of the Portsmouth terminal, correct?

25 A. I don't agree with that statement, sir.

1 containers. My fault.

2 A. Okay. Because, I mean -- I'm not
3 convinced that my math in that e-mail was not wrong.
4 So if we were loading in and loading out, that bill
5 was double that.

6 Q. Okay.

7 A. My math ended up being wrong. When Cannon
8 and I talked about it again about the details, that
9 bill ended up being over \$50,000 when we sorted it
10 all out at the end.

11 Q. So a one-way movement would have been --
12 the total switching fee would have been a total of
13 \$24,150, correct?

14 A. For the movement from the Chesapeake yard
15 of the Belt Line into NIT.

16 Q. Okay.

17 A. There would have been --

18 (Reporter clarification.)

19 THE WITNESS: There would have been
20 \$24,150 for the one-way movement to get from
21 Chesapeake at the Belt Line up into NIT to
22 delivered. And there would have been another
23 invoice back from those same platforms loaded
24 back out of NIT through the Belt Line's
25 Chesapeake yard.

1 BY MR. LACY:

2 Q. And that's because you were moving
3 containers both into NIT and taking containers out
4 of NIT, correct?

5 A. That's correct, sir. There was -- there
6 was a follow-up messages to this -- I don't know if
7 you have it in one of these tabs -- correcting these
8 numbers.

9 Q. Okay. And to move the -- and the number
10 of containers you moved into NIT in this particular
11 movement was 250, correct?

12 A. I believe so.

13 Q. All right. And so to determine the
14 per-container price of that movement into NIT, you
15 would take the \$24,150 and divide it by the 250
16 containers, correct?

17 A. Correct.

18 Q. Okay. All right. If you go back to the
19 first page of this Exhibit 13, Mr. Whitt actually
20 questions whether the 215 -- I mean, sorry --
21 \$210 per platform is round trip. And then you
22 confirm with Cannon Moss, correct?

23 A. Cannon was in a hospital with a relative
24 up in Richmond at that moment in time. I remember
25 having a conversation. And I remember him calling

1 me a couple of days after that and saying hey, that
2 wasn't right. And I thought there was something in
3 writing clarifying that because Mr. Whitt ended up
4 being absolutely correct in those numbers.

5 Q. Got it.

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 A. Correct.

10 Q. And you talked to them about the operating
11 plan and window to get to and from NIT, correct?

12 A. I did.

13 Q. And you would have talked to them sometime
14 after March 25th of 2010, correct?

15 A. Yes.

16 Q. All right. So sometime between March 25,
17 2010, and March 27, 2010, you talked to these folks
18 about an operating window, right?

19 A. It was a really good time.

20 Q. Right. If you could -- do you recall the
21 date on which this train ran to and from the NIT?

22 A. I don't, but I'm betting it's somewhere in
23 these tabs.

24 Q. Okay. Well, that's what I'm trying to
25 triangulate, if you will.

1 Right?

2 A. You enjoyed this message, didn't you?

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED] [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED] [REDACTED] [REDACTED]

13 [REDACTED] [REDACTED]

14 Q. So this train moved -- do you recall
15 whether it moved on March 31, 2015, or sometime
16 thereafter, if you know?

17 A. I -- I will tell you this: What I do
18 remember is it took a lot of days to get it in and
19 out of Norfolk.

20 Q. Okay. But you would agree with me that
21 between March 25th when you learned of the plan to
22 run this train and March 31st, you were able to get
23 an operating plan together with the Belt Line, VIT,
24 and Norfolk Southern to run this train?

25 A. I will agree with that.

1 A. So this would be number eight?

2 Q. Yes. The eighth train that the Belt Line
3 ran for CSX, correct?

4 A. Agreed.

5 Q. If you could, open up tab 50.

6 Mr. MacDonald, this is going to be
7 Exhibit 33 to your deposition, another e-mail
8 exchange, the first page of which is Bates-stamped

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 (Thereupon, the referred-to document was
15 marked for identification as Exhibit 33.)

16 BY MR. LACY:

17 Q. All right. So this would have been the
18 ninth train that the Belt Line moved for CSX during
19 this time?

20 A. Yes, sir.

21 Q. All right. It looks like this particular
22 move was -- there were going to be 4,000 feet of
23 empty cars that would be pulled into NIT and then
24 140 containers pulled back out of NIT; is that
25 right?

1 at CSX didn't consult with you about the operating
2 plan that would be included in this rate proposal?

3 A. No idea at all.

4 Q. Would it make sense to you for them to
5 have consulted with you, given that you had moved at
6 least nine trains to and from NIT in 2015?

7 A. See, I told you earlier, I did a couple of
8 things right in 15 years, that's all.

9 Q. Did you think the operating plan, as it
10 was developed in 2015, was a workable plan in terms
11 of moving intermodal freight to and from NIT using
12 the Belt Line?

13 A. I did.

14 Q. And you would agree with me that the plan
15 attached to this rate proposal in 2018 was not the
16 operating plan that was developed through the actual
17 movement of trains to and from NIT, correct?

18 A. Say that again, Mr. Lacy.

19 Q. Sure. So this operating plan that was
20 developed in 2010, didn't it end up being the
21 operating plan that was ultimately utilized in 2015,
22 correct?

23 A. It was an adjustment, right?

24 Q. Yes. You adjusted or revised this 2010
25 operating plan for the actual movements in 2015,

1 anything, the answer is no.

2 Q. No, I didn't ask that.

3 Did you ever have to turn over those hard
4 copy files to any attorney or any other employee of
5 CSX?

6 A. Not to my knowledge.

7 Q. When did you first become aware that CSX
8 had filed this lawsuit against Norfolk Southern and
9 the Belt Line?

10 A. Middle of last year when somebody sent me
11 a text message that my old employer was looking for
12 me.

13 Q. So if this litigation or CSX filed its
14 complaint before you left in March of 2019, you
15 never heard about it at that point, right?

16 A. I wasn't engaged in that process.

17 Q. When you say someone texted you last year
18 about it, are you referring to last year being 2020
19 or 2019?

20 A. 2020.

21 Q. Got it. And I believe you testified the
22 hard copy documents you had related to the Belt Line
23 would include some maps and what else?

24 A. Some maps, agreements, some old -- some
25 old documents related to board meetings.